

**FILED**

**OCT 19 2016**

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY                      DEPUTY CLERK

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16  
17 **UNITED STATES DISTRICT COURT**  
18 **EASTERN DISTRICT OF CALIFORNIA**

19 AMERIPRIDE SERVICES INC.,

20 Plaintiffs,

21 vs.

22 VALLEY INDUSTRIAL SERVICES, INC.,  
23 a former California corporation, et al.,

24 Defendants.

Case No. 2:00-cv-00113-MCE-DB

**FURTHER STIPULATION AND ORDER  
REGARDING THE SUBMITTAL OF  
DESIGNATED DEPOSITION  
TESTIMONY AT TRIAL**

Trial Date: October 17-19, 2016

Time: 9:00 a.m.

Courtroom: 7

Judge: Hon. Morrison C. England, Jr.

Complaint Filed: January 20, 2000

1 Plaintiff AMERIPRIDE SERVICES INC. ("AmeriPride") and Defendant TEXAS  
2 EASTERN OVERSEAS, INC. ("TEO") (collectively, the "Parties"), by and through their  
3 respective counsel, stipulate with respect to the submittal of deposition testimony at  
4 trial, as follows:

5 **RECITALS**

6 1. Pursuant to the Final Pretrial Order, the Court has set a three (3) day  
7 bench trial for Monday, October 17, 2016 through Wednesday, October 19, 2016.

8 2. To expedite the trial, the Parties previously stipulated to a procedure for  
9 submitting deposition testimony at trial. Dkt. 1058.<sup>1</sup> The Parties' stipulation was  
10 adopted as an order of this Court on August 10, 2016 (the "Order"). Id.

11 3. In addition to the stipulations previously agreed upon in the Order, the  
12 Parties further stipulate that, for purposes of the trial, deposition testimony will have the  
13 same effect as live testimony and will be treated as live testimony.

14 4. In the interest of facilitating an efficient trial, the Parties agree that there  
15 needs to be a procedure for admitting the designated testimony and the designated  
16 deposition exhibits into evidence, but are unable to agree on a procedure to recommend  
17 to the Court. The Parties will defer to the Court on the first day of trial.

18 5. Since this action was first filed, there have been over thirty (30) depositions  
19 taken in this consolidated action. A large number of the depositions were taken  
20 between 2003 and 2006. As a result, some of the court reporters are no longer in  
21 business or no longer have the files upon which to prepare a certified copy of the  
22 deposition and exhibits. Further, as several parties have settled this matter, the original  
23 certified transcripts have been difficult to locate. The Parties therefore stipulate to  
24 permit the use of non-certified deposition transcripts at trial. This stipulation does not  
25 eliminate any objection to the authenticity of the deposition previously made by the

26  
27 <sup>1</sup> "Dkt." refers to the Court's ECF Docket number for this case.

1 Parties pursuant to the requirements of the Final Pretrial Order and the Order.

2       6. Section 6(a) of the Order states that “[w]ithin fifteen (15) days of giving  
3 notice of intent to call a witness by deposition, the party proposing to call a witness by  
4 deposition shall designate those portions of the deposition testimony and any deposition  
5 exhibits discussed within those portions...” Dkt. 1058 (emphasis added). On  
6 September 2, 2016, in addition to designating deposition testimony, TEO designated  
7 certain deposition exhibits for use at trial and exchanged the designations with  
8 AmeriPride in accordance with Section 6(a) of the Order. On September 22, 2016,  
9 AmeriPride counter-designated certain deposition exhibits for use at trial in the event  
10 the Court allows the Parties to use deposition exhibits that were not included on the  
11 Parties’ respective Exhibit Lists. See Dkt. 1066. Based on the Parties’ understanding  
12 of the language of the Order and the Parties’ shared intent in entering into it, the Parties  
13 did not list the designated deposition exhibits on their Exhibit List.

14       7. AmeriPride will not object to TEO’s designated deposition exhibits on the  
15 basis that they were not listed on TEO’s Exhibit List. AmeriPride does not waive any  
16 other objection by way of this agreement. At the trial, if the Court deems admissible a  
17 deposition exhibit designated by TEO, the Court may mark each such deposition exhibit  
18 as TEO’s next trial exhibit in order.

19       8. TEO will not object to AmeriPride’s designated deposition exhibits on the  
20 basis that they were not listed on AmeriPride’s Exhibit List. TEO does not waive any  
21 other objection by way of this agreement. At the trial, if the Court deems admissible a  
22 deposition exhibit designated by AmeriPride, the Court may mark each such deposition  
23 exhibit as AmeriPride’s next trial exhibit in order.

24       9. The Parties have agreed to jointly file and lodge one set of marked  
25 deposition transcripts and designated deposition exhibits for trial.

26       10. All of the deposition transcripts and designated deposition exhibits that are  
27 subject to the Order and this Stipulation are filed with the Court at Dkt. 1090 to 1090-27.

1 11. Good cause exists for the Court to grant the request because: (1) the use  
2 of designated deposition testimony will facilitate a more efficient trial; (2) the agreement  
3 will encourage efficient pretrial activities between Parties; (3) the agreement will not  
4 prejudice the Parties or the Court and will not delay the case; and (4) the stipulation will  
5 not affect the Parties' compliance with any other requirements in the Court's Final  
6 Pretrial Order.

7 **STIPULATION**

8 Based on the foregoing, AmeriPride and TEO request that:

9 1. For purposes of the trial, the Court shall treat designated deposition  
10 testimony of witnesses the same as live testimony;

11 2. The Court will permit the Parties to offer deposition exhibits into evidence  
12 notwithstanding that any such exhibit may not be included on the Parties' Exhibit Lists,  
13 however any other objections, including but not limited to lack of foundation or hearsay,  
14 are not waived and may be raised by the party opposed to the admission of any such  
15 exhibit;

16 3. The Court will mark any admitted deposition exhibit not previously identified  
17 on either party's Exhibit List as the offering party's next exhibit in order.

18 4. The Court will permit the use of non-certified deposition transcripts and  
19 deposition exhibits at trial.

20 Date: October 14, 2016

BASSI, EDLIN, HUIE & BLUM LLP

21  
22 By: /s/ Fred M. Blum  
23 FRED M. BLUM  
24 ERIN K. POPPLER  
25 Attorneys for Defendant  
26 TEXAS EASTERN OVERSEAS, INC.  
27  
28



1 Date: October 14, 2016

HUNSUCKER GOODSTEIN PC

2  
3 By: /s/ Brian L. Zagon  
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7 Date: October 14, 2016

PERKINS MANN & EVERETT, APC

8  
9 By: /s/ Lee N. Smith  
10 LEE N. SMITH  
11 Attorneys for Plaintiffs  
12 AMERIPRIDE SERVICES INC.

13  
14 **ORDER**

15 IT IS SO ORDERED.

16 Date: 10.19.16

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18   
19 HON. MORRISON C. ENGLAND, JR.  
20 UNITED STATES DISTRICT JUDGE